

Planning Commission Date: October 22, 2003

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Staci Pereira

Public Hearing: Yes: X No: _____

Notices Mailed On: 9-26-03

Published On: 9-25-03

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TITLE: **SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. 1532 (P-UA2003-17):**

Proposal: Verification of compliance with all conditions of approval for Use Permit No. 1532 for a cafe (Q-Cup).

Location: 1679 N. Milpitas Blvd. (APN 22-02-049)

RECOMMENDATION: **Approval of new special conditions.**

Applicant: Ted Chen, Q-Cup Café, 1679 N. Milpitas Blvd., Milpitas, CA 95035

Property Owner: Milpitas & Dixon Associates, Attn: Su Li Lo, P.O. Box 1020, Los Altos, CA 94023-1020

Previous Action(s): "S" Zone approval and amendments, use permit approval and amendments

Environmental Info: Exempt

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial "C1" District

Existing Land Use: Neighborhood shopping center

Agenda Sent To: Applicant and property owner (both noted above)

Attachments: letter from applicant, email from concerned resident dated October 3, 2003

PJ No. #2191

BACKGROUND

The Planning Commission approved an "S" Zone application for the Crescent Square shopping center in January of 1999. Since then, the Commission has approved two freestanding signs and a Sign Program on August 25, 1999, a freestanding sign and building signs for Walgreens on December 9, 1999, several use permits for restaurants and a Computer Network Center (UP No. 1612).

On January 26, 2000, the Planning Commission approved Use Permit No. 1532 for a café with 26 indoor seats. Later that year on September 13th, the Planning Commission approved an amendment to the use permit which allowed for the sale and on-site consumption of beer and wine. The conditions of approval for the amendment included a six-month review. After review of the file upon receipt of several noise complaints to the code enforcement hotline, staff discovered the review had never been performed.

The item was scheduled for Planning Commission review on October 8, 2003, but was continued at the applicant's request to allow for additional time to consider the new conditions recommended by staff.

Site Description

The Crescent Square shopping center is located on 5.25 acres at the southwest corner of North Milpitas Boulevard and Dixon Road. It encompasses a 29,800 square foot multi-tenant retail building, a 6,000 square foot day care building, and a 13,760 square foot Walgreen's drug store. The subject space is the southern-most tenant in the multi-tenant retail building.

The site is zoned Neighborhood Commercial, as are the parcels directly across North Milpitas Boulevard to the east, and the parcels across Dixon Road to the north. These parcels are developed with retail uses, including retail shopping, personal services and gas stations. Immediately west of the shopping center lies Friendly Village mobile home park, and immediately south lies the Mobile Lodge mobile home park.

ANALYSIS

As previously noted, a six-month review was required for Use Permit Amendment No. 1532 to ensure compliance with the conditions of approval due to the allowance of sale, and on-site consumption, of beer and wine. The conditions for the amendment state the beer and wine sales shall only commence after 6:00 PM Monday through Friday and no limits on hours on weekends or holidays when the neighboring pre-school is not open. This approval for beer and wine was for a previous tenant and since the present tenant (Q-Cup Café) does not provide any beer or wine sales on-site, no review of this condition is necessary. Regarding compliance with the other conditions of approval for the original Use Permit No. 1532 for the café, Planning and Police staff have determined that the applicant has been not in compliance with a seating condition of approval that limits seating to 26 indoor seats. The outdoor seating may be contributing to the exterior noise problems at the site and is discussed later in the analysis.

Within the past four months the City has received several noise complaints regarding noise coming from the shopping center past 9:00 PM. In a letter to the Planning Division from the president of Q-Cup Café, he states that the noise is not coming from the café but rather from the shopping center parking lot. He notes that the café keeps their doors closed and any noise is from patrons parking in the Crescent Square parking lot and from patrons of the shopping center across the street. Staff acknowledges the possibility of noise from the vehicles in the parking lot may be from patrons from other stores, however, Q-Cup is the only tenant in Crescent Square that is open in the evening hours after 9:00 PM.

Staff requested the Police Department perform a site visit on a weekend night when the café is open until 2:00 AM in order to determine the source of the noise. The officer reported that on both nights, Friday (9-5-03) and Saturday (9-6-03), there were 6 outdoor tables with chairs on the sidewalk occupied by Q-Cup patrons and the door to the café was open with patron's voices emanating from inside. The officer also witnessed people in the parking lot congregating near vehicles with loud exhaust pipes and music from the car stereos. Staff witnessed a similar scene on the previous Saturday night. Planning and Police staff have concluded the noise complaints stem from the exterior activity attributable to Q-Cup patrons: the outdoor seating, the open doors, and from people loitering in the parking lot.

Staff received a comment letter on the application regarding the housekeeping of the parking lot of the subject site, which has been included in the Commissioner's agenda packet. The issues raised in the letter are not related to noise. Staff will monitor the site conditions raised and will taken them into consideration at the time of the three month review.

Staff is recommending the use permit be amended by adding additional Special Conditions to help mitigate the noise impacts resulting from this business.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit Amendment No. P-UA2003-17 with four new Conditions of Approval listed below as numbers 13-16.

SPECIAL CONDITIONS

The following Special Conditions are a part of the original approval of Use Permit No. 1532 by the Planning Commission on 1/26/00:

1. The maximum seating is 26 indoor seats. Prior to issuance of a certificate of occupancy, a sign shall be conspicuously posted near each restaurant's front entrance stating the maximum dining room seating allowed (26). There shall be at least one (1) foot by one (1) foot in area with three (3) inch high letters. (P)
2. Any signage for the proposed use shall comply with the approved Sign Program for Crescent Square shopping center. (P)
3. The restaurant use shall comply with Planning Commission Resolution No. 168, a resolution regarding standard conditions for commercial development. (P)

4. These restaurant uses shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved plans. (P)
5. Any change to the restaurant's floor plan, such as a change in the dining room size or the number or type of seats shall require Planning Commission review and approval of an amendment to this Use Permit. Minor changes may be approved by the Planning & Neighborhood Preservation Director. (P)
6. All floor drains, elevator shaft sump pumps, trash compactors, and indoor or covered mat and equipment washing areas shall be drained to the sanitary sewer. The building permit plans shall reflect these requirements through notes and/or drawings. (P)
7. Washing of containers and equipment must be conducted in the kitchen area such that wash water may drain into the sanitary sewer. (P)
8. The trash dumpster and the dumpster area are to be maintained clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)

The following Special Conditions were added on 9/13/03 when the amendment of Use Permit No. 1532 was approved by the Planning Commission:

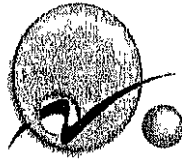
9. Alcohol sales are limited to beer and wine for on-site consumption only. No sale of hard alcohol or spirits is allowed. Sale of hard alcohol or spirits will require a subsequent amendment to this Use Permit. (P)
10. Beer and wine sales shall only commence after 6:00 p.m. Monday through Friday. No limits on beer and wine sales are imposed on weekends and holidays when the nearby preschool is not operating beyond those of the Department of Alcoholic Beverage Control. (P)
11. This use shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
12. Within six (6) months of occupancy or commencement of sales of beer and wine—whichever is sooner—the applicant shall submit all necessary application materials and fees for a six-month review by the Planning Commission. (PC added Special Condition 9-13-00)

Four new Special Conditions recommended by staff for approval by the Planning Commission for the six-month review of Use Permit Amendment No. 1532 (P-UA2003-17).

13. "No Loitering" and "Parking for Crescent Square Patrons Only, All Others Will Be Towed" signs shall be installed in the Crescent Square parking lot. The applicant shall submit a site plan to the Planning Division indicating the location of all signage. (P)
14. All doors to the establishment shall remain closed during all hours of operation. (P)
15. During all hours of operation for the business at the said location, the business owners shall be responsible for enforcing the no loitering and no parking provisions established by the signs required in condition of approval No. 13 and controlling the noise generated by their patrons on the site. The Milpitas Police shall be contacted when additional enforcement is necessary. (P)

16. A three-month review is required to occur at the Planning Commission meeting of January 25, 2004 to evaluate compliance with the conditions of approval. The applicant is responsible for all necessary material required for this review, including the public hearing material. (P)

Planning Division = (P)



QCUP Milpitas
1679 N. Milpitas Blvd. Milpitas, CA 95035

To: City of Milpitas – Planning Division
Re: Use Permit

We would like the City of Milpitas to know that we do acknowledge the concerns about excessive noise in the parking lot outside our store. We want to work with the City to resolve the problem, but we do need to get all the facts straight before we do so. We understand there are complaints from the mobile homes behind our plaza, but we need to get the details from the Police Dept to see if it is 3 households complaining all the time, or it is 20 households. It makes a big difference, because I contacted the previous owner of bliss café and their employees, they said the people behind our unit complains ALL the time about noise, now this is a café that went out of business and sold to us, it is a business that have 2-3 hours with no customers and they open 6 days a week and close at 9pm sharp each day. Now if store like this get complaints from the same people, it only tells us that they will keep complaining until the whole plaza is not there. I personally walked to the back wall (on our side of the fence) on a couple of occasions. The sound from the cars driving by on Milpitas Blvd overshadows any of the customers who happen to be outside in the parking lot. So for those people behind our plaza to single out people versus cars on Milpitas Blvd is just not reasonable. I think we know which is louder and for a prolonged time. One more thing of interest, we have really big heavy doors that are kept shut during business hours so we know the noise is not coming from the store. Now since the noise appear to be coming from the parking lot whom we share with everybody and is accessible to anybody that wants to drive by ie they don't want to wait at the light, so they turn in at the other corner where Dixon Landing is and go onto Milpitas Blvd from where are store is. We cannot be held liable for these passer-bys. To make matters worse the plaza across the street from us have a serious parking problem. We see people constantly park in our parking lot in front of our store since it is the closest to the light and walk across the street from our side. While I agree we do have customers that park at our store at night, I do not believe we should be penalized for people that want to take a shortcut or people that are going to patronize our competitors across the street from us. It is just not fair. We pride ourselves in being a great location for young people that might otherwise be causing trouble elsewhere in the city. We do not serve alcohol and we are approved by many parents as a place they feel their kids are safe to stay late at. We also work with the Milpitas school district on some of their past and upcoming events since we are popular with many students. We are taking some step to mitigate noise problem by posting sign requesting car stereo to be turned down after 9Pm each day. We feel that we can contribute to the City and should not be targeted and penalized by a few residents who would complain about anything and everything.



Ted Chen
President

Staci Pereira

From:

Sent: Friday, October 03, 2003 6:24 AM

To: Staci Pereira

Subject: Q-Cup Review

Dear Ms. Pereira,

I am a resident of Milpitas and this letter is prompted by a notice that I received in the mail regarding your review of the Q-Cup at 1679 Milpitas Blvd. I would like to address the condition of the parking lot in front of the Q-Cup. I walk through this parking lot on Saturday mornings and have found it to be quite a mess. I am sure that Saturday mornings are no different from any other mornings, but that morning happens to be when I walk thorough.

This is what I have found:

- Q-Cup cups with "Pearls" in them are lying all over. Some have been run over, some just sitting around.
- Starbucks cups
- OJ bottles
- McDonalds sacks
- Asian food containers
- Wheel stops broken and some of the pieces I have found on the sidewalk of the daycare
- Broken glass

The mess seems to be consolidated to the front of the Q-Cup and maybe some to the North. I appreciate you taking this into consideration in your review.

A concerned resident.

10/3/2003